FILED
DEC 31 192
CHARLES ELMORE CR
CLE

FILE COPY

No. 281

In the Supreme Court of the United States

OCTOBER TERM, 1929

UNITED STATES OF AMERICA, APPELLANT

v.

D. D. ADAMS

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS

BRIEF FOR THE UNITED STATES

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	3
Summary of argument	4
Argument:	
I. The statute involved makes each entry an offense	5
II. The indictments involve independent transactions	11
Conclusion	13

CITATIONS

Cases:	
Albrecht v. *United States*, 273 U. S. 1	11
Badders v. *United States*, 240 U. S. 391	8
Bower v. *United States*, 296 Fed. 694 (certiorari denied, 266 U. S. 601)	6, 7
Donnelley v. *United States*, 276 U. S. 505	6
Ebeling v. *Morgan*, 237 U. S. 625	8–11
Henry, In re, 123 U. S. 372	6, 8
King v. *United States*, No. 70; decided October 28, 1929	11
Snow, In re, 120 U. S. 274	8
United States v. *Koenig Coal Co.*, 270 U. S. 512	5
Statutes:	
Revised Statutes, section 5209, as amended by the Act of September 26, 1918, c. 177, 40 Stat. 967, 972 (U. S. C. Title 12, Sec. 592)	2, 4
Criminal Appeals Act, March 2, 1907, c. 2564, 34 Stat. 1246 (U. S. C. Title 18, Sec. 682)	1

In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 281

UNITED STATES OF AMERICA, APPELLANT

v.

D. D. ADAMS

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the District Court (R. 13) has not been reported.

JURISDICTION

The judgment to be reviewed was entered on June 4, 1929. (R. 12.) Appeal was petitioned for on July 1, 1929, and allowed the same day (R. 14), pursuant to the provisions of the Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1246 (U. S. C. Title 18, Sec. 682). Statement of jurisdiction

was filed in compliance with Rule 12 of this Court on August 24, 1929, and on October 28, 1929, this Court found that probable jurisdiction had been shown.

QUESTION PRESENTED

The sole question raised is whether an acquittal under an indictment charging the making in the books of a bank of a false entry purporting to show that $75,000 had been remitted to an outside bank, is a bar to a prosecution under an indictment charging the making of a false entry in a different book purporting to show that $75,000 had been deposited in a customer's account, both entries, in the view of the court below, being "based upon the same draft."

STATUTE INVOLVED

Section 5209 R. S. as amended by the Act of September 26, 1918, c. 177, 40 Stat. 967, 972 (U. S. C. Title 12, Sec. 592), reads as follows, so far as pertinent:

> Any officer, director, agent, or employee of any Federal reserve bank, or of any member bank as defined in the Act of December twenty-third, nineteen hundred and thirteen, known as the Federal Reserve Act, who * * * makes any false entry in any book, report, or statement of such Federal reserve bank or member bank, with intent in any case to injure or defraud such Federal reserve bank or member bank, or any other company, body politic or corporate, or any individual person, or to deceive any officer of

such Federal reserve bank or member bank, or the Comptroller of the Currency, or any agent or examiner appointed to examine the affairs of such Federal reserve bank or member bank, or the Federal Reserve Board; * * * shall be deemed guilty of a misdemeanor, and upon conviction thereof in any district court of the United States shall be fined not more than $5,000 or shall be imprisoned for not more than five years, or both, in the discretion of the court.

STATEMENT

Appellee, an officer of the Union Bank & Trust Company of Batesville, Ark., a member bank of the Federal reserve system, was indicted in the District Court of the United States for the Eastern District of Arkansas upon the charge of making a false entry in the Individual Ledger of his bank, purporting to show that on June 30, 1926, the firm of which he was apparently a member, had made a deposit of seventy-five thousand dollars in said bank, when in truth no such deposit was made. (R. 1–2.) He thereupon filed a "plea of former jeopardy and former acquittal," alleging that he had previously been tried and acquitted under an indictment charging him with making on the same day a further false entry in a different book of the bank, viz, the Journal Ledger and Daily Balance Book, purporting to show that on June 30, 1926, his bank had made a remittance of seventy-five thousand dollars to an out-of-town bank, when in truth

no such remittance was made. (R. 2, 3.) After reciting the above facts, the plea alleged that both entries were based upon a single draft, and each indictment charge would require the same evidence. (R. 2–12.) No evidence was offered in support of the plea except the former indictment and the judgment of acquittal thereon. The court sustained the plea (R. 12–13) upon the ground (R. 13)—

> that there can be but one prosecution for false entries based upon a single draft or check passing through a bank, even though several different entries are made in the different books of the bank, provided all relate to the same basic check or draft.

SUMMARY OF ARGUMENT

Section 5209 of the Revised Statutes, as amended, prohibits and penalizes "any false entry in any book, report, or statement" of the bank. This language is unambiguous. The Act does not punish fraudulent transactions but "any false entry." It does not define or punish false entries by groups or series. One false entry may be successfully used to cover up another culminating in a fraudulent transaction. Acquittal which may be thus made possible, on an indictment involving the fraudulent transaction, should not preclude inquiry into and prosecution for such a false entry. The integrity of the National banking system requires that the statute be given effect according to its terms.

The two indictments here involved charge unrelated entries and transactions. The former, under which the defendant was acquitted, charged a false entry to create an ostensible creditor-debtor relation between the Union Bank of Batesville, Arkansas, and the Federal Bank & Trust Company of Little Rock, Arkansas; the indictment at bar charges a false entry to create an ostensible debtor-creditor relation between the Union Bank and a depositor. The evidence required to prove the one is not required to prove the other. As the two indictments relate to independent debtor-creditor relations entered in different books, they charge two distinct offenses.

ARGUMENT

I

THE STATUTE INVOLVED MAKES EACH ENTRY AN OFFENSE

The statute upon which the indictment in the case at bar is bedded, punishes any bank official or employee who "makes any false entry in any book, report, or statement" of the bank. The language of the statute is unambiguous and should be given full effect. As said by this Court in *United States* v. *Koenig Coal Co.*, 270 U. S. 512, 520—

> The general rule that criminal statutes are to be strictly construed has no application when the general purpose of the legislature is manifest and is subserved by giving the words used in the statute their ordinary meaning and thus covering the acts charged.

Similarly in *Donnelley* v. *United States,* 276 U. S. 505, 512, this Court said:

> The rule that penal statutes are to be strictly construed in favor of persons accused is not violated by allowing the language to have its full meaning where that construction is in harmony with the context and supports the policy and purposes of the enactment. *United States* v. *Hartwell,* 6 Wall. 385, 395. *United States* v. *Wiltberger,* 5 Wheat. 76, 95.

The precise point here involved appears not to have been decided in any reported case, but we submit that under the construction of the statute in analogous cases the judgment below should be reversed.

In *Bower* v. *United States,* 296 Fed. 694 (certiorari denied, 266 U. S. 601), the defendant was charged in separate counts with making several false entries in one report. He contended that only one crime was committed, but the court rejected that view, saying (p. 695):

> The statute prohibits the making of any false entry, not the making of a false report, and each false entry constitutes a separate and distinct crime, even though the several entries are made on the same day and contained in the same statement or report. *Morse* v. *United States,* 174 Fed. 539, 552, 98 C. C. A. 321, 20 Ann. Cas. 938.

Any rule which would permit but one prosecution for dissimilar false entries in different books

of the bank, on the theory apparently adopted by the court below that they were based upon a single transaction would seem equally to forbid more than one prosecution for a group of false entries made at the same time in but one report, and yet the contrary was held in the *Bower case, supra.* The statute violated says nothing about basic checks or drafts, but it does undertake to punish "any false entry in any book, report, or statement." The entry charged in the indictment at bar may have been essential to cover up the falsity of the separate and distinct entry charged in the first indictment against defendant. It is inconceivable that Congress intended that a way should thus be left open for a defendant to cover up one false entry with another with impunity merely because both false entries relate to a single transaction. The maintenance of the integrity of the Federal banking system would seem to require that each false entry even though based upon a single transaction, should be treated as a separate offense. Such construction effectuates the purpose of the legislation, and is plainly within the scope of the language employed.

The principle applied in *In re Henry,* 123 U. S. 372, is applicable here. In that case the statute involved punished the placing of "any letter or packet in any post office" in execution of any scheme or artifice to defraud. The indictment charged each letter so placed in the mails as a sepa-

rate offense. In upholding the validity of the judgment of conviction on each charge, this Court said (p. 374):

> As was well said by the district judge on the trial of the indictment, "the act forbids, not the general use of the post-office for the purposes of carrying out a fraudulent scheme or device, but the putting in the post-office of a letter or packet, or the taking out of a letter or packet from the post-office in furtherance of such a scheme. Each letter so taken out or put in constitutes a separate and distinct violation of the act." It is not, as in the case of *In re Snow*, 120 U. S. 274, a continuous offence, but it consists of a single isolated act, and is repeated as often as the act is repeated.

That the ruling in the *Henry case*, just quoted from, was not rested upon a principle of construction applicable only to the statute there considered, but was based upon a principle applicable to any statute which forbids individual acts as does the statute in the case at bar, rather than a course of conduct as in *In re Snow*, 120 U. S. 274, is shown by the fact that in *Badders* v. *United States*, 240 U. S. 391, 394, which was also a post-office fraud case, this Court cited *Ebeling* v. *Morgan*, 237 U. S. 625, which arose under an entirely different statute.

In the *Ebeling case* this Court said (pp. 629–631):

> Section 189, under which this indictment was prosecuted, provides:

"Whoever shall tear, cut, or otherwise injure any mail bag, pouch, or other thing used or designed for use in the conveyance of the mail, or shall draw or break any staple or loosen any part of any lock, chain, or strap attached thereto, with intent to rob or steal any such mail, or to render the same insecure, shall be fined not more than five hundred dollars, or imprisoned not more than three years, or both."

Reading the statute with a view to ascertaining its meaning, it is apparent that it undertakes to make an offender of anyone who shall cut, tear, or otherwise injure any mail bag, or who shall draw or break any staple or loosen any part of any lock, chain or strap attached thereto, with the felonious intent denounced by the statute. These words plainly indicate that it was the intention of the lawmakers to protect each and every mail bag from felonious injury and mutilation. Whenever any one mail bag is thus torn, cut or injured, the offense is complete. Although the transaction of cutting the mail bags was in a sense continuous, the complete statutory offense was committed every time a mail bag was cut in the manner described, with the intent charged. The offense as to each separate bag was complete when that bag was cut, irrespective of any attack upon, or mutilation of, any other bag. The words are so plain as to require little discussion or further amplification to ascertain their meaning. The separate counts each charged by its distinctive number the sepa-

rate bag and each time one of them was cut there was, as we have said, a separate offense committed against the statute. * * *

The case is not like those charges of continuous offenses where the crime is necessarily, and because of its nature, a single one, though committed over a period of time. * * *

As we interpret the statute, the principle applied in *Gavieres* v. *United States,* 220 U. S. 338, is applicable, where this court held that, when in the same course of conduct, and upon the same occasion, certain rude and boisterous language was used, and an officer insulted, two offenses were committed, separate in their character, and this, notwithstanding the transaction was one and the same. The principle stated by the Supreme Judicial Court of Massachusetts, in *Morey* v. *Commonwealth,* 108 Massachusetts, 433, was applied, where it was held that a conviction upon one indictment would not bar a conviction and sentence upon another indictment, if the evidence required to support the one would not have been sufficient to warrant the conviction upon the other without proof of an additional fact, and it was there declared that a single act might be an offense against each statute, if each required proof of an additional fact which the other did not, and that conviction and punishment under one does not exempt the defendant from conviction and punishment under the other statute.

> So here, proof of cutting and opening one sack completed the offense, and although defendant continued the operation by cutting into other sacks, proof of cutting one sack would not have supported the counts of the indictment as to cutting the others; nor was there that continuity of offense which made the several acts charged against the defendant only one crime.

The statute in the case at bar quite as much as the statutes dealt with in the cases above reviewed, is so framed as to indicate with clearness a legislative purpose to punish individual acts and not a course of conduct, from which it follows that each false entry constitutes a separate offense.

It is well settled that Congress may prohibit and punish separately each step leading to the consummation of a transaction, and also the completed transaction. *Albrecht* v. *United States,* 273 U. S. 1; *King* v. *United States,* No. 70, decided by this Court on October 28, 1929.

II

THE INDICTMENTS INVOLVE INDEPENDENT TRANSACTIONS

It is submitted further that the court's conclusion "that there can be but one prosecution for false entries based upon any single draft or check passing through a bank, even though several entries are made in the books of the bank, provided all relate to the same basic check or draft," apart from any question as to its soundness as a legal proposi-

tion, has no proper application to the case at bar. The assumption of fact that the two indictments are "based upon the same draft" is contradicted by the language of the plea and the indictment assailed. On the face of the two indictments the false entries charged are wholly unrelated transactions each complete in itself. The former indictment charged a false and fraudulent entry to create a debtor-creditor relation between the Union Bank & Trust Company of Batesville, Arkansas, and the Federal Bank & Trust Company of Little Rock, Arkansas. (R. 5.) The indictment at bar charges a false and fraudulent entry to create a debtor-creditor relation between the Union Bank & Trust Company and D. D. Adams and Sons. (R. 1-2.)

The former indictment does not charge as an ingredient of the offense the fraudulent deposit charged in the indictment at bar. No evidence as to said deposit was necessary to make out a case under the former indictment, which involved a remittance of $75,000 of the general assets of the bank, which remittance it was charged was not in fact made. There is nothing in this record to contradict the presumption that the $75,000 ostensible deposit remained on the books of the bank subject to the check of D. D. Adams and Sons long after the remittance of $75,000 had been made to the Little Rock bank; indeed, still stands there. We submit that the evidence required to make out a case under

the former indictment is not required or necessary to make out a case under the indictment at bar. As the two indictments relate to two distinct debtor-creditor relations, they charge two distinct offenses.

The allegation of the plea that the Government must rely on the same evidence in both cases is erroneous on its face and a mere conclusion of law of the pleader.

CONCLUSION

It is respectfully submitted that the judgment below should be reversed.

CHARLES E. HUGHES, Jr.,
Solicitor General.
O. R. LUHRING,
Assistant Attorney General.
GEORGE C. BUTTE,
Special Assistant to the Attorney General.
HARRY S. RIDGELY,
Attorney.
CHARLES P. SISSON,
Assistant Attorney General,
Of Counsel.

DECEMBER, 1929.

U. S. GOVERNMENT PRINTING OFFICE: 1929